

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2311 OF 1996

Rajdhar Bhura Wagh,
Indian Inhabitant of
at and post Bokar, Dhule
District Dhule.

..Petitioner

Versus

1. Municipal Council, Dhule
Through its Chief Officer.

2. D.V.Mangrulkar,
Judge, Labour Court, Dhule.

3. S.V.Vitkar,
Member, Industrial Court,
Nashik.

..Respondents

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Petitioner : Served
Advocate for Respondent 1 : Shri P.M.Shah
Respondents 2 & 3 : Deleted

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 22, 2016

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ORAL JUDGMENT :-

1. Despite service of transfer notice, the petitioner has not caused an appearance. Rather than dismissing the matter in default, I have considered the case of the petitioner on the basis of the petition paper book.

2. Respondent Nos.2 and 3 are the Labour and Industrial Courts

and hence stand deleted from the petition.

3. Shri Shah, learned Advocate has supported the impugned judgment.

4. The petitioner is aggrieved by the judgment dated 15.9.1994, delivered by the Industrial Court, by which, the Revision (ULP) No.66 of 1991, filed by the respondent - then Municipal Council, has been allowed.

5. The petitioner claimed to be working from January 1984 as a Malaria Bigari. On 6.8.1988, he was terminated. Juniors were retained in service. No notice, salary in lieu of notice or retrenchment compensation was paid to the petitioner. He approached the Labour Court in Complaint (ULP) No.96 of 1998. By judgment dated 22.3.1991, the Complaint was allowed only on the ground that the chart of number of days worked, placed on record indicated that the petitioner had worked for 268 days in 1987. He was granted reinstatement with continuity of service and was deprived of backwages.

6. The Industrial Court, while considering the Revision Petition, filed by the respondent, concluded that the petitioner had not reported for work, though the Labour Court granted interim relief on

19.1.1989. During the pendency of the complaint, when interim relief was granted, he did not join duties. The chart below Exhibit 20, produced by the respondent was interpreted by the Labour Court, which erroneously drew a conclusion that he has worked for 240 days in one calendar year. When the said chart was closely perused by the Industrial Court, it was revealed that in the twelfth calendar month, preceding the date of reference i.e. 6.8.1988, the petitioner had worked for only 224 days in between September 1987 and 6.8.1988.

7. The Industrial Court, therefore, concluded that as the petitioner did not report for duties despite the interim order of the Labour Court, it could be presumed that he was not interested in employment.

8. Notwithstanding the above, it cannot be ignored that the respondent is a State instrumentality. It does not have any power to create posts, much less grant regularization on any post. The petitioner was working on daily wages and as such, there was no post available. Merely because in one year, the petitioner had completed 240 days in employment, could not have invited the direction of reinstatement with continuity in service.

9. This Court, while admitting the petition on 29.9.1995, did not

grant any interim relief to the petitioner.

10. In the light of the above, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous.

11. The petition being devoid of merits is, therefore, dismissed.
Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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